requirement that the respondents (the debtor) must ascertain from NKHC as to the state of accounts between NKHC and the appellants in order to verify the supply of steel that had been made. That being so, the arrangement was not absolute and therefore not a valid equitable assignment but merely a request to the respondents to pay the appellants. Such a request or authorisation did not give the appellants any rights against the respondents, and could be revoked by the creditor (NKHC). They had a *locus poenitentiae*. Thus in *Ex parte Hall, In re Whitting*[5] a landlord wrote to his tenant "authorising and requesting" him to pay the rent to the landlord's bank "to my credit for which I will accept their receipt as so much of your rent discharged." This was not an assignment, but only an authority to the tenant to pay the bank. In *Coulls* v. *Bagot's Executor and Trustee Co. Ltd.*[6] an agreement between *A* and *B* provided for payment of royalties by *B* to *A* and concluded: "I (A) authorise ... (B) to pay all money connected with this agreement to my wife ... and myself ... as joint tenants." The document was signed by *A*, *B* and *A's* wife. A majority of the High Court of Australia took the view that the agreement did not contain a promise by *B* to *A* to pay *A's* wife but only a *mandate* by *A* to *B* to pay *A's* wife. This mandate was revocable and had been revoked by *A's* death.

In the circumstances the learned judge was right when he said that the assignment was enforceable only on an *ad hoc* basis whenever the PWD was instructed by NKHC from time to time to make the payment direct and which was consistent with the fact that out of the fifteen progress payments due to NKHC, only five of them, namely, the fourth, eighth, tenth, eleventh and fifteenth progress payments were paid direct to the appellants on the instructions of NKHC. If it was the intention of the parties to make absolute assignment of all NKHC's rights to the appellants, then there was no necessity to reserve to NKHC the power to direct PWD as to the amount to be deducted from each progress payment. As matters stood, for every payment, the PWD must first obtain instruction from NKHC as to the amount to be released to the appellants.

For my part I will dismiss the appeal with costs.

Suffian L.P. and **Wan Suleiman F.J.** concurred.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

SYARIKAT BANITA SDN. BHD. v. GOVERNMENT OF STATE OF SABAH

[F.C. (Suffian L.P.) June 30 and July 1, 1977]

[Kuala Lumpur — Federal Court Civil Application No. 2 of 1977]

Constitutional Law — State Legislation — Challenge on the ground that it is contrary to Federal Constitution — Competency of State legislature to make law not challenged — High Court has original jurisdiction — Leave of judge of Federal Court not required — Federal Constitution, Articles 4(3) and (4), 8, 13 and 128.

In this case the applicant intended to sue the Sabah Government for a declaration that a new subsection (7) of section 24 of the Sabah Forests Enactment, 1968, was void as it was contrary to several provisions of the Federal Constitution. The applicant applied to a judge of the Federal Court for leave to bring the action.

Held: as the validity of the new section is to be challenged on the ground that it is contrary to the provisions of the Federal Constitution and not on the ground that it deals with a matter with respect to which the Sabah legislature has no power to make law, the High Court has jurisdiction in the matter and the leave of a judge of the Federal Court is not required.

Cases referred to:-

(1) *Stephen Kalong Ningkan* v. *Tun Haji Openg & Tawi Sli (No. 2)* [1967] 1 M.L.J. 46.

(2) *Yeoh Tat Thong* v. *Government of Malaysia & Anor.* [1973] 2 M.L.J. 86.

(3) *Ah Thian* v. *Government of Malaysia* [1976] 2 M.L.J. 112.

FEDERAL COURT.

S.D.K. Peddie for the applicant.

Nicholas Fung Ngit Chong (State Attorney-General) for the respondent.

Suffian L.P.: I ruled that (1) the leave sought by the applicant is unnecessary and (2) the High Court has jurisdiction to determine the matter in dispute. My reasons for so ruling are as follows.

The applicant company had a timber concession in Sabah and some time late in 1976 or early in 1977 the Sabah Government cancelled the concession, acting under a new subsection (7) of section 24 of the Sabah Forests Enactment 1968 which gives power to a Minister to revoke or cancel in the public interest timber licences issued prior to July 15, 1976.

The applicant intended to sue the Sabah Government in the Federal Court for a declaration that the new subsection (7) was void because of several reasons and for consequential relief. Some of the reasons were:

(1) the new subsection (7) was law which provided for the compulsory acquisition of property without compensation and was therefore contrary to article 13(1) of the constitution;

(2) the new subsection was colourable legislation and an attempt to circumvent article 13(1);

(3) the new subsection was discriminatory (article 8?); and

(4) the new subsection interfered with the applicant's fundamental right under the constitution to acquire, hold and dispose of property.

The applicant applied to me as a judge of the Federal Court for leave to commence proceedings against the Sabah Government in the Federal Court.

Mr. Peddie for the applicant submitted that, because of clauses (3) and (4) of article 4 and because of article 128, the Federal Court had exclusive jurisdiction to determine the matter which his client intended to bring before the courts, but first the leave of a judge of the Federal Court was necessary.

Clauses (3) and (4) of article 4 read:

"(3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or —

(a) if the law was made by Parliament, in proceedings between the Federation and one or more States;

(b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.

(4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a judge of the Federal Court; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause."

Clause (1) of article 128 reads:

"(1) The Federal Court shall, to the exclusion of any other court, have jurisdiction to determine in accordance with any rules of court regulating the exercise of such jurisdiction —

(a) any question whether a law made by Parliament or by the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws; and

(b) disputes on any other question between States or between the Federation and any State."

Mr. Peddie conceded that forests were a state subject with respect to which the Sabah legislature had power to make law (item 3(b) of the State List in the 9th Schedule to the Federal Constitution), but argued that in enacting the new subsection it contravened the various articles of the constitution already referred to and thereby exceeded its powers, that therefore the state legislature had no power to make that law within the meaning of article 4(3), and it followed that the new subsection was unconstitutional and for the purpose of seeking a declaration to that effect the applicant had to apply for my leave to bring the matter to the Federal Court.

In the light of *Stephen Kalong Ningkan* v. *Tun Haji Abang Openg & Tawi Sli* (No. 2),[1] *Yeoh Tat Thong* v. *Government of Malaysia & Anor.*[2] and *Ah Thian* v. *Government of Malaysia*[3] I agreed with the learned State Attorney-General of Sabah that the word "matter" in clause (3) of article 4 has the same meaning as the word "matters" in clause (2) of article 74, that as the impugned subsection deals with a state subject, i.e. a matter with respect to which the Sabah legislature has power to make law, the proposed challenge to the validity of the new subsection does not come within clause (4) of article 4 or clause (1)(a) of article 128.

The validity of the new subsection is to be challenged not on the ground that it deals with a matter with respect to which the Sabah legislature has no power to make law (on the contrary, as already stated, it was conceded that it deals with a matter within the competence of that legislature). It is to be challenged on the ground that it is contrary to several provisions of the constitution. The fact, if such be it, that it is so contrary does not mean that it deals with a matter with respect to which the State legislature has no power to make law.

In the circumstances I am of the opinion that clauses (3) and (4) of article 4 do not apply. Accordingly, the Federal Court has no original jurisdiction to determine the dispute between the applicant and the Sabah Government, the High Court has such original jurisdiction, and if the applicant wishes to sue the Sabah Government the leave of a judge of the Federal Court is not required. Finally, I would like to add that, if the applicant sues the Sabah Government, it does not have to specifically ask for a declaration that the subsection is void. Arguments to that effect may be advanced in the usual way during the course of submissions.

Order accordingly.

Solicitors: *Skrine & Co.*

LEE CHICK YET v. CHEN SIEW HEE & ORS.

[O.C.J. (Hashim Yeop A. Sani J.) June 17, 1975]

[Ipoh — Civil Suit No. 288 of 1974]

Charity — Land held in trust for national type primary school — Action by "supporter" of school against trustees and others — Attorney-General joined as a party — Government Proceedings Ordinance, 1956, s. 9.

Government Proceedings Ordinance, 1956, s. 9 — Land held in trust for national type primary school — Action by "supporter" of school against trustees and others — Attorney-General joined as a party.

An action was brought by a "supporter" of a school against trustees and others for a declaration that the transfer of the school land to the other defendants by the trustees was null and void. The defendants objected that the plaintiffs could not take action without joining the Attorney-General as the trust was a charitable trust in law.

Held: in the context of section 9 of the Government Proceedings Ordinance the provisions of subsection (2) did not by itself justify that the whole proceedings should be set aside. The court would make an order that the plaintiff within 2 weeks comply with the provisions of section 9(1).

Cases referred to:-

(1) *Lee Eng Teh & Ors.* v. *Teh Thiang Seong & Anor.* [1967] 1 M.L.J. 42.

(2) *Yeoh Him & Ors.* v. *Yeoh Chong Kang & Ors.* 4 Ky. 500.

(3) *Cheah Ewe Chong & Anor* v. *Cheah Kee Ee & Ors.* [1934] M.L.J. 212.

(4) *Kader Mydin & Ors.* v. *Hadjee Abdul Kader* 1 Ky. 489.

CIVIL SUIT.

Lim Kean Chye and *P.C.Q. Leow* for the plaintiff.

U. Harcharan Singh for the 1st, 2nd and 3rd defendants.